IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-04-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE J.A.K. SAMPATH KUMAR

O.S.A.NO.234 OF 2001
and
C.M.P.NO.11892 OF 2001

M/s. Crompton Greaves Ltd.,
Bombay Mutual Building,
232, N.S.C. Bose Road,
Chennai 600 001. .. Appellant/Petitioner

Vs.

M/s. Dyna Technologies Pvt Ltd,
Plot No.246, Nehru Nagar,
Old Mahabalipuram Road,
Kottivakkam,
Chennai 600 096. .. Respondent/4th Respondent

Appeal filed under Clause 15 of the Letters Patent and Order 36 Rule 1 of O.S. Rules read with Section 37 of the Arbitration Act and Conciliation Act, 1996 against the order dated 8.2.2001 in O.P.No. 352 of 1998.

For Appellant : M/s. Nageswaran & Narichania
For Respondent : Mr.R. Murari

J U D G M E N T

P.K. MISRA, J

This appeal is filed against the order of the learned single Judge in O.P.No.352 of 1998, which was filed by the appellant to set aside the award dated 8.2.2001 rendered by the Arbitral Tribunal.

2. Appellant is a Public Limited Company. A contract was entrusted by DCM (hereinafter referred to as 'DCM' in short) with M/s. Crompton Greaves Limited (hereinafter referred to as 'CGL' in short), the appellant, for an aquaculture unit to be setup by such Principal, namely, DCM. CGL invited tenders for carrying out certain works for construction of ponds, channels, drains and associated works. M/s. Dyna Technologies Pvt. Ltd., the present respondent, who was the fourth respondent, in O.P.No.352 of 1998, gave its proposal, estimate and quotation for

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carrying out the work. Thereafter CGL placed a letter of indent and M/s. Dyna Technologies Pvt. Ltd., made several queries and raised certain clarifications and by letter dated 10.10.1994, CGL amended the contract as suggested by M/s. Dyna Technologies Pvt. Ltd. Thereafter CGL issued work order on 15.11.1994 setting out the terms and conditions of the work. After commencement of the work, on 5.1.1995, CGL instructed the employees of M/s. Dyna Technologies Pvt. Ltd., to stop the work. M/s. Dyna Technologies Pvt. Ltd., claimed compensation for such pre-mature termination of the contract and ultimately a dispute was referred to Arbitral Tribunal consisting of three arbitrators, who were impleaded as respondents 1 to 3 in O.P.No.352 of 1998. Initially M/s. Dyna Technologies Pvt. Ltd., has lodged a claim for Rs.54,21,170.45 which was later on reduced to Rs.53,83,980.45. The Arbitral Tribunal passed award on 30.4.1998 directing the present appellant, namely, CGL to pay a sum of Rs.1,78,222/- towards interest on the admitted amount of Rs.4,18,551.50. Such later amount was admittedly paid during the proceedings. The Arbitral Tribunal also passed award for a sum of Rs.24,73,268/- for the loss due to unproductive use of machineries. The Arbitral Tribunal, however, had rejected the claim of M/s. Dyna Technologies Pvt. Ltd., on loss of profit. Thereafter the present appellant filed O.P.No.352 of 1998. Against the dismissal of such petition filed under Section 34 of the Arbitration Act, 1996 (hereinafter referred to as "the Act"), the present appeal has been filed under Section 37 of the Act.

3. The averments which were made in the claim statement filed before the Arbitral Tribunal can be noticed.

The claimant had enclosed the proposal on 25.4.1994 and the appellant accepted the same on 25.7.1994 and placed the letter of indent. As per such letter of indent, M/s. Dyna Technologies Pvt. Ltd., as to complete the work within eight months after mobilisation. Such mobilisation has to be done within 14 days. The schedule of price and terms of payment have been indicated in the letter of indent. Clause 10 of the letter of indent provides for compensation for idle equipment and manpower in the event of stoppage of work beyond 7 days. The rates for such idle charges were, however, not communicated to the claimant and, therefore, M/s. Dyna Technologies Pvt. Ltd., addressed a letter dated 23.8.1994 raising several queries on the letter of indent. The claimant and the present apellant held discussion on the basis of which the claimant set out the rates of idle hours for individual items of equipments. CGL in reply dated 10.10.1994 pointed out that the work had started in the last week of July 1994, but only intermittent work was possible due to several problems. Since certain defects were pointed out by M/s. Dyna Technologies Pvt. Ltd., the CGL has agreed to compensate M/s. Dyna Technologies Pvt. Ltd., to that extent. The rates for idle machinery and labour were also set out in that letter. By a further letter dated 10.10.1994, the CGL amended the contract value of Rs.2,08,99,250/- and requested the claimant to mobilise the required machinery to complete Phase I and Phase II. The CGL thereafter issued work order dated 15.11.1994 setting out the terms and

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conditions of the work. The work order was issued belatedly, even after the contract had been underway for several months. The CGL at that juncture sought to introduce several new conditions in the work order necessitating a reply from the claimant. The CGL in clause 10(C)(2) of the work order had provided for termination of the contract under the conditions indicated therein. The CGL had sought to provide therein that it would be entitled to terminate the contract under the situation printed in that clause. Such clause was included for the first time in the work order issued four months after the letter of indent and had been issued with malafide intention. M/s. Dyna Technologies Pvt. Ltd., addressed letter dated 30.11.1994 referring to the clauses of the work order and stating that in the event of termination the CGL would be obliged to fulfill their obligations accrued on the date of termination and the CGL shall indemnify and reimburse all losses as the result of the termination. In reply the CGL by letter dated 8.12.1994 stated that such provision would be applicable only when the contract is terminated by their customer, namely, DCM Shriram Aqua Foods Ltd. In para 2 of the letter it was stated that if machines remained idle for want of work fronts, idle charges would be paid in accordance with the contract. In response thereto on 15.12.1994, M/s. Dyna Technologies Pvt. Ltd., stated that as the work was being done under the CGL supervision, the responsibility of providing adequate work for the equipment was on the CGL. As per the contention of M/s. Dyna Technologies Pvt. Ltd., for ascertaining the terms between the parties, all such documents, including the letter of indent, work order and all the correspondence are to be looked at and the terms of the contract should be culled out from the said documents. It was specifically stated that if the contract were to be terminated by DCM the CGL would be liable to fulfill all the obligations upto the date of termination and also indemnify / reimburse the claimant, the losses sustained as a result of such termination. It has been further stated that the claimant had agreed to mobilise the equipment required even before the letter of indent was received on the basis of personal request of the Genera Manager of the CGL. The claimant had also decided to mobilise on the assurance of the General Manager, DCM and General Manager of the CGL that the entire area available for operations as the work-front and the claimant had immediately started the mobilisation and the first dozer landed on 18.7.1994. The CGL had assured M/s. Dyna Technologies Pvt. Ltd., that the entire work fronts would be available and all hindrances including the condition of the roads would be settled. On such basis, M/s. Dyna Technologies Pvt. Ltd., immediately mobilised the equipments such as 3 Nos. of dozers, 1 No. of excavator and 6 Nos. of tippers. However, the CGL failed to fulfill the obligation. From the time the first dozer landed on 18.7.1994 there was problem because of resistance of local population and such dozer was not allowed to be unloaded by the villagers and the problem was temporarily resolved only with police intervention on 18.7.1994. When the second dozer reached the site on 23.7.1994, the M/s. Dyna Technologies Pvt. Ltd.,'s site engineer directed the transporter to take another route to unload the dozer. It is narrated in the claim petition that due to such disturbances and due to

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non-availability of permission under Coastal Regulatory Zone Regulations, there is lot of delay and disturbances and ultimately the CGL unilaterally directed the claimant to stop the work. In short, M/s. Dyna Technologies Pvt. Ltd., made the following claims:-

"(1) Losses due to idle charges
(2) Losses due to unproductivity of the men and machineries which could not work due to hindrances
(3) Loss of profit as the contract got dissolved and
(4) Interest on the above claims, and
(5) Costs

These are listed in the statement of claims totalling to Rs.54,21,170.45 initially on 21.6.97 and revised to Rs.53,83,980.45 on 5.7.97.

The following is a summary of the final claim:-

(1) Idle charges for machineries and demobilisation as approved by M/s. Dyna Technologies Pvt. Ltd.,	..	Rs. 4,18,551.50
(2) Losses due to unproductive use of machineries	..	Rs.45,85,286.00
(3) Loss of Profit	..	Rs.20,89,925.00
(4) and (5) Interest and Costs	..	to be assessed
	..	Rs.70,93,763.33
Deduct payment already received	..	Rs.17,09.782.88
Deduct payment already received		Rs.17,09,782.88
Balance due	..	Rs.53,83,980.45

Interest & Costs

4. The CGL in the objection had indicated that there was no fault on the part of the CGL. It was further stated that since the work itself was abandoned / stopped by the Principal, namely, DCM Sriram Aqua Foods Ltd., as per the agreed terms of the contract, the CGL had to instruct M/s. Dyna Technologies Pvt. Ltd., the claimant, to stop the work and no compensation is payable. Various claims made were specifically denied and it was stated that whatever amount payable was already been paid.

5. While considering the claim relating to idle charges for machineries and demobilisation charges as approved by the M/s. Dyna Technologies Pvt. Ltd., such issue got settled during first arbitration hearing on 27.9.1997 when offer of payment of Rs.4,18,551/- was made by

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the CGL and accepted by the claimant and a cheque for such amount was handed over on 13.10.1997. The CGL had blamed M/s. Dyna Technologies Pvt. Ltd., for not receiving such offer made long back and refused to pay interest, but the claimant pleaded for payment of 24% interest from 5.1.1995. In the award it is recited "the M/s. Crompton Greaves Ltd., (present appellant) considered the request on moral grounds". The arbitrator awarded 18% interest per annum from 1.6.1995 to 13.10.97, when the cheque for Rs.4,18,551/- had been paid. It was further stated that such interest amount of Rs.1,78,221.93 should be paid on or before 30.6.1998, if not interest may be paid at 18% per annum till the date of actual payment.

While considering the claim No.3 relating to unproductive usage of machineries, various grievances and submissions were noted by the arbitrators in sub paras (a), (b), (c), (d), (e) and (f) in main para 3.1. various objections were summarised in para 3.3 upto 3.9. Ultimately, the Arbitral Tribunal has concluded as follows:-

> "3.4. The above arguments and various authorities quoted by them have been studied by the Tribunal and we are convinced that the compensation is payable on the hire charges and expenses incurred by the claimant based on the claims made by him in June 1995 and now submitted by the clamant in his revised claim petition on 5.7.97. We are convinced that the machineries have been actually mobilised from the letter R-3, R-8 and R-10 issued by DCM reporting on the number of machineries deployed by claimant. The claimants have produced the log books and bills for the various machineries and modified their claims. The Tribunal had perused the log books and idle wages approved in C-7 by M/s. Dyna Technologies Pvt. Ltd., and the claims made in R-17.
>
> Claim No.1 for interest on idle charges paid late.- The claim was made by claimant on 6.5.95 and the M/s. Dyna Technologies Pvt. Ltd., could have paid on or before 315.95. Therefore interest at 18% has to be paid from 1.6.95 till 30.4.98 which is the date of award.
>
> Claim No.2 for the compensations - The claim was made on 8.8.95 and it could have been settle in 3 months. Therefore the interest is allowed at 18% to be paid from 8.11.95 until 30.4.98 which is the date of award.
>
> . . .
>
> Summing up:-
>
> Value of Claim No.1 including interest upto date of award i.e. 30.4.98 .. Rs. 1,78,222
>
> Value of Claim No.2 including interest upto date of award

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i.e. 30.4.98 .. Rs.24,73,268

.. Rs.26,51,490

The above amount shall be paid on or before 30.6.98. If not paid, respondent shall pay interest at 18% until the awarded amount is paid."

6. In the petition filed under Section 34 of the Act, it was contended that the Arbitral Tribunal had failed to give a finding upon the important question as to whether the claimant was entitled to any compensation on account of termination of the contract. It was further contended that the dispute referred to the Arbitral Tribunal was whether the claimant was entitled for compensation as per the work order and the subsequent correspondence exchanged between the claimant and the present appellant, but the award was silent on the above aspect. It was further stated that the award was given without rendering a finding regarding the entitlement and as such the award was on matters beyond the scope of submission to the arbitration. It is further indicated that the Arbitral Tribunal had not given reasons, even though required under the Act. Similarly it was specifically raised that the Arbitral Tribunal had failed to appreciate the contents of various correspondence and more particularly the condition specifically agreed to the effect that CGL had the right to terminate the contract without payment of compensation in the event of the original contract between the CGL and their customer DCM was terminated or suspended for any reason. It was further contended that the Tribunal had ignored the provisions contained in Section 65 of the Contract Act and moreover the Tribunal failed to notice that the CGL had not derived any advantage and, therefore, there was no obligation to pay any compensation to the claimant. It was further stated that M/s. Dyna Technologies Pvt. Ltd., had admitted that they had been paid as per the work order and, therefore, no further amount was payable. It was further stated that the dispute relating to idle charges was resolved on 15.5.1996 and thereafter t he claimant was not entitled to any interest. It was also specifically stated that the subject matter of reference was not regarding the entitlement of interest of Rs.1,78,222/- on the amount of Rs.4,18,551.50.

7. In the proceedings in O.P.No.352 of 1998, the claimant filed objection reiterating the basis of the claims made by the claimant. In the objection it was stated that the petition filed by the appellant was outside the scope of Section 34 of the Arbitration and Conciliation Act, 1996 and it was further stated that the arbitrators had considered all the aspects and their award was not open to challenge. It was further stated that termination of the contract was only due to difficulty in getting the environmental clearance and not on account of any legal bar and therefore the arbitrator was justified in giving compensation.

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8. While considering the question of payment of interest, the learned single Judge held that since the present appellant had considered that it was liable to pay interest, the direction regarding payment of interest on account of the fact that the amount payable on Claimant had not been paid in time was justified. While considering the other contention relating to liability to pay compensation, the learned single Judge observed that the argument that arbitrators have not given finding that the present appellnt is liable to pay compensation is not correct. Learned single Judge further extracted paragraph 3.1(g) and held that arbitrator had given specific finding that the amount paid as compensation is actually the amount spent by the claimant and, therefore, the present appellant was liable to reimburse the loss sustained by the claimant. The contention of the present appellant that the arbitrator passed the award beyond the scope of reference was answered by stating that violation of the terms of the agreement was part of the reference and, therefore, the Arbitral Tribunal had not exceeded the terms of reference. It was further concluded that power of the arbitrator was in respect of interpretation of the contract, which should not be interfered with by the court merely because the court takes a different view of the contract and the court is not required to re-appreciate the evidence and the award can be set aside only on the limited ground. Accordingly the petition was dismissed.

9. The main contention raised in this appeal is to the effect that the amount claimed by the claimant is basically a claim for payment of compensation or damages on account of the premature termination of the contract. However, the Arbitral Tribunal has not at all considered the terms of the contract to come to any conclusion regarding he right of the claimant to claim compensation or damages and the corresponding liability of the CGL to pay such amount. On the other hand, as per the terms of the work order, no such compensation is payable.

10. The work order which was marked as Ex.C-12 before the arbitrators consisted of different conditions in three parts, namely, A. General, B. Terms and Conditions with regard to labour and C. Other Conditions. Paragraph 2 relates to termination of contract and the relevant clause is extracted hereunder:-

"2. Termination of Contract:

The Company reserves the right to terminate this work at any stage without payment of compensation due to any of the following reasons :

a. If the original contract between the client and the company is terminated / suspended

b. The company is unable to proceed with the work due to reasons like non-availability of work fronts, delay in

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availability of materials or delay in receipt of payments from clients etc.

c If the contractor is not able to carry out work to the satisfaction of the company's clients representatives.

d. If the contractor is unable to ensure adequate progress as required by the company and their purchaser.

e. Upon termination of this contract/work order, all rights and obligations of the parties, shall cease provided that the termination shall not relieve the contractor of any of his obligations which may have accrued upto the date of termination.

Upon termination of this contract / work order due to default on the part of the contractor, he / it shall indemnify the company against all losses incurred by the company as a result of such termination."

11. It was the specific case of the claimant before the Arbitrators that after such work order was issued about four months after the letter of indent and since certain aspects were not acceptable, the claimant had written a letter to the CGL on 30.11.1994, which document was marked as Ex.C-15. Paragraphs 2, 3 and 4 of such letter are extracted herunder :-

"(2) General Terms & Conditions Sl.No.C2(b)

For any contract not to be a one sided contract, equal rights are available to both parties. Hence due to delay in receipt of payment from M/s.CGL, we also have the right to terminate this contract without any compensation to M/s.CGL whatsoever.

(3) General terms and Conditions Sl.No.C2(d) & (e)

Similarly should the contract be terminated by the contractor due to default by M/s.CGL to provide satisfactory work fronts, provide adequate utility or the equipment, all obligation of the contractor M/s. Dyna Technologies (P) Ltd., shall cease and M/s. CGL shall be oblige to fulfill their obligation which have accrued upto the date of termination.

(4) General Terms & Condition Sl.No.C(2) last para

Should the contract be terminated by M/s. Dyna Technologies (P) Ltd., due to default on the part of M/s.CGL and /or their client, M/s. Dyna Technologies (P) Ltd., shall not be responsible for any losses by M/s.CGL and / or their client, and M/s. CGL and / or their client shall indemnify and reimburse all losses incurred by M/s. Dyna Technologies (P) Ltd., as a result of such

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termination."

12. Before the arbitrators it was contended by the claimant that in reply to such letter Ex.C-15, the present CGL had given a reply Ex.C-17 dated 8.12.1994 and according to the learned counsel for the claimant / M/s. Dyna Technologies Pvt. Ltd.,, such reply, particularly as contained in para 3, accepts the position that in case of termination of the contract, compensation is payable. It appears that such letter contains a parawise reply of the CGL to the questions raised in the letter dated 30.11.1994. Para 3 of such Ex.C-17, which is apparently reply to para 3 of Ex.C-15, is extracted hereunder :-

> "3. This is applicable only when contract is terminated by the customer (i.e. M/s.DSAFL). As this contract is being executed in association with M/s. Dyna Technologies, obligations regarding earthwork shall be taken care by M/s. Dyna Technologies."

This para 3 of Ex.C-17 is the reply to para 3 of Ex.C-15 and para 3 of Ex.C-15 is in relation to general terms and conditions S.No.C2 (d) and (e). Para C.2 relates to termination of contract, under which the CGL had reserved the right to terminate the work at any stage without payment of compensation. However, it was specifically envisaged that termination should be due to any of the reason indicated. Sub-para (a) to (e) indicate the reasons. As per sub-para (a) of para C.2, the CGL had the right to terminate the work if the original contract between the client, namely, DCM Sriram Aqua Foods Limited and the company (CGL) is terminated / suspended and in that event there was no requirement of payment of any compensation. Sub-para (d) envisages justifiable termination if the contractor is unable to ensure adequate progress as required by the company and their purchaser, meaning thereby DCM Sriram Aqua Foods Limited. Sub-para (e) contemplates that all rights and obligations of the parties shall cease upon termination of the contract / work order. The proviso, however, envisages that termination shall not relieve the contractor (meaning thereby the claimant / M/s. Dyna Technologies Pvt. Ltd.,) of any of his obligations which may have accrued upto the date of termination. Para 3 of Ex.C-15 was with specific reference to para C.2(d) and (e), which have been extracted. This only reserves a right with the contractor (claimant) to terminate the contract due to default by CGL (present appellant) to provide satisfactory work fronts, to provide adequate utility or the equipment in which event all obligations of the contractor, M/s. Dyna Technologies (P) Ltd., shall cease and CGL shall be obliged to fulfill their obligations accrued upto the date of termination. Reply to such para 3 is also extracted. We do not think as to how para 3 of the reply contained in Ex.C-7 creates any right in favour of the contractor to claim compensation or damages for termination of the contract by CGL on account of termination of contract by the client, namely, DCM Sriram Aqua Foods Ltd. Para 3 of Ex.C-17 is only reply to para 3 of Ex.C-15 and para 3 of Ex.C-15 is only relate to

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para C.2(d) and (e) of the work order, but it is not a caveat to para C.2 (a). Even the Arbitral Tribunal has also not come to any conclusion by interpreting these letters that the claim of the contractor for compensation or damages can be sustained on account of such correspondence as contained in Ex.C-15 and Ex.C-17, even though that was the submission which had been made.

13. By carefully going through these clauses, we do not find any basis to come to the conclusion that in the event of termination of the contract on account of the fact that the client, namely, DCM Sriram Aqua Foods Ltd., terminated the contract can form basis for claim of compensation / damages by the claimant. In this context, learned counsel for the CGL has drawn our attention to letter dated 18.5.1996 issued by M/s. Dyna Technologies (P) Ltd., (claimant), which is extracted hereunder:

> "We have agreed for a claim settlement of Rs.4,18,551.50 for machine idle charges and demobilising of machines from site which has been detailed in our letter Ref: DT/ACC/CGL/96/002 dated 15.5.96.
>
> However during course of execution of job and premature closure of the job we have incurred a lot of losses which is brought to your notice off and on. The detailed work sheet as requested by you has been already submitted.
>
> We request you to take up the matter with your client for settlement of the compensation after which we await our share."

14. A perusal of the aforesaid letter indicates that the present claimant was requesting the CGL to take up the matter to DCM Sriram Aqua Foods Limited for premature termination of the contract. The letter further indicates that the claimant was persuading the CGL to take up the matter with DCM for settlement of the compensation "after which we await our share". This letter rather conveys the clear meaning that the matter relating to compensation for premature termination of the contract by DCM should be taken up with DCM by the CGL so that in the event of any compensation being paid, a share from such compensation can be paid to the contractor (claimant).

15. A perusal of the award clearly indicates that it had been specifically raised by the CGL regarding the terms of the contract and specific attention has been invited to clause C.2(a). However, the Arbitral Tribunal has not indicated anywhere that such contention is not acceptable. In fact the award of the Tribunal does not indicate anywhere as to on what basis it has come to the conclusion that as per the terms of the contract the contractor has a right to claim compensation or damages on account of any premature termination of the contract. A perusal of the award merely indicates that the Tribunal has merely recounted the contentions raised by the claimant, summarised the objections of the CGL

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and thereafter the Arbitral Tribunal has suddenly jumped to the conclusion regarding the liability to pay.

16. Law is now well settled that an arbitrator cannot travel beyond the contract to award compensation. As a matter of fact, in the present case, the contract expressly stipulates that no compensation is payable if the contract is terminated on account of termination of the project by the Principal, namely, DCM. In the face of such expressed prohibition, the Arbitral Tribunal has obviously committed error by directing payment of compensation even without disclosing the basis for arriving at such conclusion.

17. Learned counsel appearing for the respondent has submitted that Arbitral Tribunal does not consist of qualified law knowing persons and in this case it has consisted of several engineers and, therefore, it is not expected of them to write an award in the same manner as a judgment is written by a law court. Learned counsel has placed reliance upon the decision of the Supreme Court reported in AIR 1988 SC 1340 (INDIAN OIL CORPORATION LTD. v. INDIAN CARBON LIMITED).

18. It is of course true that an arbitrator cannot be expected to write a detailed judgment as in a law court. However, the present Act contemplates that the award of the arbitrator should be supported by reason. The decision relied upon by the counsel for the respondent, rendered on the basis of the Arbitration Act, 1940, cannot be pressed into service keeping in view the specific provision contained in the Act. Moreover, even assuming that the ratio of the said decision is applicable, we cannot cull out any underlying reason in the award for directing payment of compensation. The basis for the right of the claimant and the basis of the liability of the present appellant have not been indicated anywhere within four corners of the award and inspite of the best efforts it is not possible to discover even any latent reason in the award.

19. It was also contended that the discussion in para 3.1(g) of the award contains the basis and reason given by the Tribunal.

We have carefully gone through such paragraph as well as the preceding and subsequent paragraphs. In our considered opinion, the statements recited in para 3.1 including para 3.1(g) are only substance of the submissions / claim made by the claimant and para 3.1(g) cannot be construed as a conclusion or even the reasoning given by the Tribunal.

20. Learned counsel for the respondent has relied upon Section 34(4) of the Arbitration Act and has submitted that in case if this court finds that the Arbitral Tribunal has not given reason, even though it is so required under Section 31(3) by invoking jurisdiction under Section 31 (4), this Court can give opportunity to the Arbitral Tribunal to resume the arbitral proceedings or to take action as in the opinion of the Arbitral Tribunal would eliminate the grounds for setting aside the arbitral award.

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21. We do not think that the present case is a fit case where the Arbitral Tribunal can be called upon to give reasons in support of its conclusion. This is because, in our considered opinion, the terms of the contract clearly exclude the possibility of payment of any compensation on account of premature termination of the contract as envisaged in para C.2 (a).

22. There is no dispute in the present case that the work entrusted by DCM Sriram Aqua Foods Limited to CGL was terminated by DCM. It is also not disputed that it was on account of the fact that such project could not be undertaken due to violation of Coastal Regulatory Zone Regulations. Para C.2(a) clearly stipulates that in such an event no compensation would be payable if the contract is terminated by CGL. No demur has been raised by the claimant to such a clause contained in the work order in the reply, which was given by the contractor relating to other clauses and not to the above clause. Section 34(2)(iv) envisages that arbitral award may be set aside if the arbitral award deals with a dispute not contemplated or not falling within the terms of the submission to arbitration. When a specific exclusion is there in the contract, obviously the Arbitral Tribunal cannot travel beyond the contract and give an award.

23. Even though these matters were specifically raised before the learned single Judge, learned single Judge seems to have simply observed that the present appellant had submitted to the jurisdiction of the arbitrators and there was no illegality. Learned single Judge has not made any efforts to find out the specific clause which excluded the payment of any compensation on account of premature termination. In such view of the matter, we are unable to sustain the award on this score.

24. The contention raised on the basis of the provisions contained in the Contract Act can also be noticed. Sections 65, 70 and 73 of the Indian Contract Act are extracted hereunder :-

> "65. Obligation of person who has received advantage under void agreement, or contract that becomes void. - When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.
>
> 70. Obligation of person enjoying benefit of non-gratuitous act.- Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

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73. Compensation for loss or damage caused by breach of contract. - When a contract has been broken, the party who suffers by such breach is entitle to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach."

25. Section 65 relates to obligation of the person who has received advantage under void agreement, or contract. First of all it is not a case where the contract is discovered to be void. It was not the case that contract subsequently became void. It may be that DCM was unable to proceed with the project on account of many stumbling blocks. At any rate, even assuming that first part of Section 65 is applicable, there is nothing to show that the present appellant CGL has received any advantage under the said agreement or contract and therefore he has a duty to restore such advantage. The principle of restitution recognised under Section 65 does not have any applicability to the facts of the present case.

26. Similarly, Section 70 of the Contract Act is also not applicable. It is not a case where the CGL had enjoyed the benefit of a non-gratuitous act rendered by the claimant. Value of the work completed by the claimant had obviously been given and therefore Section 70 is not applicable.

27. Section 73 contemplates compensation for loss or damage caused by breach of contract. In the present case, in view of the specific clause agreed to by the parties, we do not think the principle under Section 73 of the Contract Act can also be made applicable.

28. The basis of liability has neither been found by the Tribunal nor there is anything specifically shown before us to come to a conclusion that in fact the present appellant was liable. On account of termination of the contract which had occasioned because the Principal, namely, DCM itself had terminated the project. It may be that if the CGL would have received some compensation from DCM on account of some premature termination of the contract, the present claimant would have been entitled to certain share from such compensation or damages. As a matter of fact, that appears to be the tenor of the letter written by the claimant on 18.5.1996. However, it is not in dispute that no further compensation had been paid by the DCM to CGL and on the other hand it seems that at that stage DCM was claiming refund of certain amount which had been given as advance. Be that as it may, in the absence of anything to how that the CGL has received any compensation on account of the premature termination, we do not think in law the CGL had any liability to pay compensation.

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29. The Arbitral Tribunal had directed payment of interest. It seems that such payment was based on the concession made by the CGL. That part of the award of the Tribunal need not be set aside.

30. During pendency of the appeal, certain amounts were deposited and after lapse of some period, the present claimant / respondent had been permitted to withdraw certain amount. In the peculiar facts and circumstances of the case and particularly keeping in view that claimant / respondent was not at fault, it may be inequitable to direct the claimant / respondent to repay the sum received by it, particularly when part of such sum can be said to be in discharge of liability towards payment of interest. To be very fair to the counsel appearing for the appellant, even though the appellant has prayed for refund of such amount after adjustment of the amount payable towards interest at Rs.1,78,222/- along with further interest as per the direction of the Arbitral Tribunal, he has not very seriously pressed such contention.

31. In the result, the appeal is allowed in part and the award of the Tribunal relating to Claim No.2 is set aside. The appellant shall be permitted to withdraw the amount lying in deposit or lying under any bank guarantee. However, the amount already withdrawn by the claimant/respondent need not be refunded. There would be no order as to costs. Consequently the connected miscellaneous petition is closed.

dpk

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Sub-Asst. Registrar, Original Side, High Court, Madras.

2. The Record-keeper, V.R. Section, High Court, Madras.

+ One cc to Mr. Nageswaran, Advocate sR 29445
+ One cc to Mr. r. Murari, Advocate sR 30068
NG (co)
sg 9/6/07

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